

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Launeil Sanders and Janneth Sanders,)	C/A No.: 7:07-cv-3510-GRA-WMC
)	
Plaintiffs,)	
)	
v.)	ORDER
)	(Written Opinion)
Henry McMaster, et al.,)	
)	
Defendants.)	
)	

This matter comes before the Court to review the magistrate's Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(d), D.S.C., filed on November 10, 2008. Plaintiff originally filed a complaint pursuant to 42 U.S.C. § 1983. The magistrate now recommends that this Court dismiss the plaintiff's complaint for lack of prosecution. For the reasons stated herein, this Court adopts the magistrate's report and recommendation.

Plaintiffs originally filed suit pursuant to 42 U.S.C. § 1983, arguing that the South Carolina courts have unconstitutionally denied their pleas for relief because the court system is racist. Defendant Ingalls filed a motion to dismiss on August 15, 2008. The magistrate issued an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising the plaintiffs of the summary judgment procedure and the possible consequences if the plaintiffs failed to respond within the allotted time. On December 12, 2008, the Magistrate William Catoe recommended that this case be dismissed for failure to prosecute. On December 19, the defendant's filed objections

to the magistrate's report and recommendation.


Plaintiffs bring this claim *pro se*. This court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *See Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th. Cir. 1983). The plaintiffs' December 19th response fails to meet this standard. Moreover, the plaintiff's failure to respond to the motion to dismiss in a timely manner makes dismissal proper under Rule 41(b).

After a review of the magistrate's Report and Recommendation, applicable case law, and the record, this Court finds that the magistrate applied sound legal principles

to the facts of this case. Therefore, this Court adopts the Report and Recommendation in its entirety. Accordingly, it is recommended that David Ingalls be dismissed as a defendant in this action for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989), *cert. Denied*, 493 U.S. 1084 (1990).

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina
January 6, 2009

NOTICE OF RIGHT TO APPEAL

Pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, Plaintiffs have the right to appeal this Order within thirty (30) days from the date of its entry. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, **will waive the right to appeal.**